

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of)
)
Implementation of)
Sections 3(n) and 332 of)
the Communications Act)
)
Regulatory Treatment)
of Mobile Services)

GN Docket No. 93-252

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To: The Commission

JOINT REPLY COMMENTS
OF THE
INDUSTRIAL TELECOMMUNICATIONS ASSOCIATION, INC.
AND
ALLIANCE OF PRIVATE 800/900 MHz LICENSEES

The Industrial Telecommunications Association, Inc. (ITA) and the Alliance of Private 800/900 MHz Licensees (APEL)¹ hereby respectfully submit these Reply Comments responsive to various comments filed in the above-referenced proceeding of the Federal Communications Commission.²

¹ APEL is an independent membership market council of the Industrial Telecommunications Association. It was formed to provide an instrumentality through which licensees of private user trunked and conventional systems may coordinate efforts to sustain the viability of 800/900 MHz spectrum set aside for private, non-commercial radio systems.

² ITA and APEL are hereinafter referred to as the "Joint Commenters."

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NEXTEL's "Retuning" Proposal

The Joint Commenters have reviewed NEXTEL's "retuning" proposal. The Joint Commenters believe NEXTEL's proposal is a bold and aggressive approach to ensuring competitive parity for Enhanced SMR systems. However, there are potential difficulties in implementation that must be examined. The Joint Commenters urge the Commission to examine NEXTEL's proposal in detail with respect to two fundamental concerns: (1) whether the proposal is compatible with the "real world" environment and (2) whether it exerts an unwarranted degree of pressure on the channels in the range 1 through 400.

The Joint Commenters have examined relevant licensing and application statistics for one metropolitan market, St. Louis, Missouri.³ In the St. Louis area, of the channels numbered 401-600, ESMR licensees appear to hold licenses, or have a priority claim by virtue of pending applications, for approximately 66 channels. This figure is 33% of the 200 channels available at 401-600. Non-ESMR interests appear to hold licenses, or have applications pending, for the remaining 134 channels in this range.

³ The St. Louis, Missouri area was selected at random. The Joint Commenters recognize that St. Louis may not be representative of other areas of the country. A more exhaustive analysis would clearly be required before any definitive conclusions can be drawn from the licensing data for St. Louis. The Joint Commenters present their conclusions merely to provide a practical frame of reference for a preliminary assessment of NEXTEL's proposal.

Assuming the validity of these figures, ESMR licensees would have to relocate a sizeable number of non-ESMR systems to other frequencies if the NEXTEL plan is implemented.

The Joint Commenters question whether there are sufficient frequencies in the channel range 1-400 to accommodate the non-ESMR systems that would be "retuned" under NEXTEL's proposal. Again with reference to the St. Louis area, approximately 165 of the 400 channels below Channel No. 401 are used for industrial/land transportation, business or public safety systems. The Joint Commenters assume that the licensees of most of these 165 channels would prefer to retain their frequencies for their own internal-use systems. If this assumption is accurate, these channels would not be available for retuning under NEXTEL's proposal.

In the St. Louis area, out of the channels numbered 1-400, there are approximately 214 channels that are either licensed for SMR use, or ultimately will be licensed for SMR use. ESMR licensees appear to hold approximately 62 of these channels, with traditional trunked SMR licensees holding 90 channels and conventional SMR licensees holding the other 62. These 214 channels appear to comprise the most likely candidates for use by the "retuned" licensees.

In summary, under the retuning proposal, NEXTEL and other ESMR licensees would likely have to retune approximately 134 channel

assignments from the channels in the range 401-600. They would have a potential base of some 214 channels from among the channels 1-400 to devote to the retuning effort. Taking 134 as a percentage of 214, approximately 62 percent of the channels in the range 1-400 that are licensed for conventional and trunked SMR channels would have to be made available for retuning, if all of the non-ESMR systems on channels 401-600 are to be retuned.

The Joint Commenters cite these figures merely to demonstrate the complexity of the retuning effort in a market like St. Louis.⁴ Retuning would require considerable cooperation from all affected parties. There is another concern as well. At present, ESMR interests have, or will have, access to approximately 128 of the 600 channels available in the St. Louis area.⁵ After the retuning area, they would be assured of access to 200 channels. The 72 additional channels would have to come from existing non-ESMR systems.

The Joint Commenters urge the Commission to examine the consequences, both positive and negative, of NEXTEL's proposal carefully. In particular, the Joint Commenters urge the Commission to ensure that the amount of channels currently available for

⁴ The difficulties would be compounded with respect to the U.S./Canada and U.S./Mexico border regions, where there would be fewer overall channels available to accommodate retuning.

⁵ The figure of 128 channels includes 66 channels among the channels numbered 401-600 and 62 channels in the range 1-400.

non-SMR private-user systems would not be compromised.

NABER's Proposal for Coordinating SMR Channels

NABER suggests that the Commission should institute frequency coordination of the 856-860 MHz SMR category frequencies. ITA believes that frequency coordination of these frequencies will help to improve processing. Should the Commission agree with NABER's suggestion, ITA trusts that the Commission will permit all three certified 800/900 MHz frequency coordinators to coordinate the SMR category channels. This is the approach currently used for conventional SMR systems on the General Category channels. ITA strongly urges the Commission to permit competitive coordination if it should decide to institute frequency coordination for the 856-860 MHz SMR channels.

Other Matters Raised In the Comments

The Joint Commenters agree with UTC's comments urging that the Commission not jeopardize private users' access to the General Category channels. Private users should continue to have access to the General Category channels for internal-use systems. The Joint Commenters also agree with AMTA that the Commission has considerable latitude in developing rules for traditional 800 and 900 MHz SMR systems and commercial 220 MHz systems. As AMTA noted, there are no substantially similar common carrier services and,

therefore, the Commission need not be overly concerned with ensuring symmetry with the common carrier regulatory structure.

The Joint Commenters also agree with the American Petroleum Institute that the FCC should keep the Part 88 "refarming" proceeding independent of the instant proceeding. The Joint Commenters believe the Commission should limit the changes to Part 90 that are adopted in Docket No. 93-252 to matters necessary to ensure conformity between the Part 22 and Part 90 regulations governing commercial systems.

WHEREFORE, THE PREMISES CONSIDERED, the Industrial Telecommunications Association, Inc. and the Alliance of Private 800/900 MHz Licensees respectfully submit these Reply Comments and urge the Federal Communications Commission to act in accordance with the views expressed herein.

**INDUSTRIAL TELECOMMUNICATIONS
ASSOCIATION, INC.**

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